

Legal Consideration for Organization's Name Change

Q We are considering changing our organization's name. What do we need to do?

A Following are legal considerations for ensuring a smooth and successful name transition:

Searching Name Availability

The first step is to make certain that the new name is available for use. Conduct a state corporate name availability search and a trademark search to be certain the desired name is available and would not be confusingly similar to another name already in use.

A state name availability search requires searching for the proposed new name in the corporate database of the state in which the organization already is incorporated and in any state in which it is registered to do business. In most states, this search can be done on the website of the secretary of state's office or other statewide business division or department. If another organization is using the same name as that proposed, the state will not allow the proposed new name to be used.

The organization also should conduct a trademark search for the proposed name to determine if the mark conflicts with another party's pre-existing trademark rights. At a minimum, the organization should conduct a preliminary search of the U.S. Patent & Trademark Office trademark database, which shows pending and current registrations for identical—or nearly identical—names. The preliminary search will show whether there are substantial impediments

to using the proposed name and, if several names are under consideration, also can help determine which is the most promising.

If the preliminary search is clear, the organization also should consider proceeding with a comprehensive name search performed by an independent company. The comprehensive search is designed more broadly to identify both registered and unregistered marks as well as trade and domain names that are similar enough to present potential risks of conflict with the proposed new name.

Once the proposed name clears the search hurdles, the organization then can either change the legal name or adopt an assumed name to complete the name change process.

Changing the Legal Name

Under most states' nonprofit corporation laws, an organization's board of directors alone cannot change the legal name of the organization. Typically, an organization must amend its articles of incorporation to legally change its name. Amending the articles of incorporation requires approval both by the board of directors and by any members who might be entitled to vote.

The organization must follow the law of the state in which it is incorporated for the specific requirements governing the vote to amend the articles. For example, in Illinois, the organization must provide the usual notice required for a vote at a meeting of members, and generally at least two-thirds of a quorum of the voting membership must approve the name change for it to be effective.

When an organization changes its legal name through amending its articles of incorporation, the organization also must notify the IRS of the change.

Adopting an Assumed Name

The other option for "changing" an organization's name is to adopt an assumed name by which an organization is known (i.e., how it markets itself to members and other stakeholders on its website, letterhead, meeting brochures and other promotional materials). This also is known as a "d/b/a," which is "doing business as." To the outside world, the organization's name has changed.

For legal purposes, however, the organization's name has not changed, so all official legal documents, such as bylaws, contracts, trademark registrations, etc., must use the legal name in addition to the assumed name (e.g., "American Widget Makers Association d/b/a Widget Makers International"). The relevant state law requirements also must be followed for adopting an assumed name. For example, Minnesota requires that the assumed name be published in the legal notices section of a newspaper in the county where the organization's principal place of business is located.

Filing with the State

For both a legal name change and adopting an assumed name, the organization must file appropriate documents with the secretary of state's office of the state where it is incorporated, and others where it is doing business, and pay the necessary filing fees. Changing the organization's name

through amending the articles of incorporation is permanent until further amendments are made. An assumed name filing usually is temporary, lasting anywhere from a few years to 10 years or more, although the name may be renewed.

The advantage of adopting an assumed name is that it can be implemented relatively inexpensively and without the need for a membership vote. The advantage of a legal name change through amending the articles is that the name is changed once and for all—until a subsequent amendment to the articles is made—and for all purposes, such that only one name need be used for letterhead, marketing materials, contracts, bylaws and other organizational documents. **■**

The answers provided here should not be construed as legal advice or a legal opinion. Consult a lawyer concerning your specific situation or legal questions.

Learn how two associations successfully embarked on name changes.

See page 28 in this issue.